

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER 98-0489
Responsible Officer
Withholding Tax
For Tax Periods: February, 1997-July, 1997

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ISSUES

1. Responsible Officer Liability – Duty to Remit Withholding Taxes

Authority: IC 6-3-4-8(f)

Taxpayer disputes the determination that he had a duty to remit the corporation's withholding taxes.

STATEMENT OF FACTS

The Indiana Department of Revenue timely assessed the corporation liabilities for withholding taxes unpaid to the state for February, 1997 through July, 1997. The corporation did not remit these taxes and the Indiana Department of Revenue assessed the liabilities against Taxpayer as a responsible officer of the corporation. Taxpayer protested this assessment. More facts will be provided as necessary.

DISUSSION

1. Responsible Officer Liability: Duty to Remit Withholding Taxes

The proposed withholding taxes were assessed against Taxpayer pursuant to IC 6-3-4-8(f), which provides that "In the case of a corporate or partnership employer, every officer, employee, or member of such employer, who, as such officer, employee, or member is under a duty to deduct and remit such taxes shall be personally liable for such taxes, penalties, and interest." The issue to be determined is whether or not Taxpayer was under a duty to deduct and remit the corporate withholding taxes to the state.

Another person was the President and Treasurer of the corporation. That person provided all of the capital to start and operate the business. He made all the business

and financial decisions for the corporation. He made all decisions regarding which bills were paid and when they were paid. Taxpayer was Vice-President of the corporation. He signed checks but only did so at the direction of the sole shareholder. Taxpayer organized work crews, kept the workload organized for them and acquired work for the corporation through his various contacts. He was an officer out of convenience to the owner. Taxpayer presented statements from the C.P.A. and four other employees supporting his allegations that he did not have the requisite duty to remit the withholding taxes that would make him personally responsible for the payment of the taxes. The Internal Revenue Service also investigated Taxpayer and has not held Taxpayer personally responsible for the federal withholding taxes.

Taxpayer did not have the duty to deduct and remit the corporate withholding taxes to the state.

FINDING

Taxpayer's protest is sustained.